DOCUMENT RESUME

ED 162 486 EC 112 759

TITLE	Guidelines for Carrying Out the Responsibilities of the Committee on the Handicapped: Handbook for the Members of the Committee.
INSTITUTION	New York State Education Dept., Albany. Office for the Education of Children with Handicapped Conditions.
PUB DATE	Apr 78
NOTE	52p.
EDRS PRICE	MF-$0.83 HC-$3.50 Plus Postage.
DESCRIPTORS	*Advisory Committees; *Agency Role; Due Process; Equal Education; *Handicapped Children; State Agencies; Student Evaluation

ABSTRACT

The handbook is designed to inform members of New York's Committee on the Handicapped regarding their responsibilities as advisors on the following issues: classification, evaluation, and educational programs for handicapped children; reevaluation of handicapped children; annual reports on the status of each handicapped child and of services; program and service evaluation; maintenance of a register; and due process procedures. In addition to a brief history of the state committee, suggestions are presented on committee organization and member roles. (CL)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U S DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

ED162486

GUIDELINES

FOR CARRYING OUT

THE RESPONSIBILITIES OF

THE COMMITTEE ON THE HANDICAPPED

A Handbook for the
Members of the Committee

The University of the State of New York
THE STATE EDUCATION DEPARTMENT
The Office for Education of Children with Handicapping Conditions
Albany, New York 12234
April, 1978

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Joan Miller

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) AND USERS OF THE ERIC SYSTEM."

EC 112759

THE UNIVERSITY OF THE STATE OF NEW YORK

Regents of the University (with years when terms expire)

1981 Theodore M. Black, A.B., Litt.D., LL.D., Pd.D., D.C.L., L.H.D. Chancellor .....Sands Point

1988 Willard A. Genrich, LL.B., L.H.D., LL.D. Vice Chancellor .....Buffalo

1986 Kenneth B. Clark, A.B., M.S., Ph.D., LL.D., L.H.D., D.Sc. .....Hastings on Hudson

1983 Harold E. Newcomb, B.A. .....Owego

1982 Emlyn I. Griffith, A.B., J.D. .....Rome

1983 Mary Alice Kendall, B.S. .....Irondequoit

1984 Jorge L. Batista, B.A., J.D., LL.D. .....Bronx

1982 Louis E. Yavner, LL.B. .....New York

1979 Laura B. Chodos, B.A., M.A. .....Clifton Park

1980 Martin C. Barell, B.A., I.A., LL.B. .....Kings Point

1981 Joseph R. Bongiorno, B.S., M.D. .....Brooklyn

1984 Louise P. Matteoni, B.A., M.A., Ph.D. .....Bayside

1981 J. Edward Meyer, B.A., LL.B. .....Armonk

1985 Arlene B. Reed-Delaney, B.A., M.D. .....;.....Albany

1987 R. Carlos Carballada, B.S. .....Arcade

President of The University and Commissioner of Education
Gordon M. Ambach

Executive Deputy Commissioner of Education
Joseph J. Blaney

Acting Deputy Commissioner for Elementary, Secondary and Continuing Education
John W. Polley

Associate Commissioner for Instructional Services
Vivienne N. Anderson

Assistant Commissioner for the Education of Children with Handicapping Conditions
Louis M. Grumet

Director, Division of Development Support Services and Special School Supervision
Richard G. Hehir

Bureau of Program Development
Lawrence C. Gloeckler

CONTENTS

Introduction..... 1

The Purpose of the Committee on the Handicapped..... 2

Suggestions to Organize the Committee..... 6

Recommendations Concerning Roles of the members of the Committee..... 8

The Responsibility to Make Recommendations to the Board of Education Regarding Classification, Evaluation and Education Programs for Handicapped Children..... 13

The Responsibility to Advise the Board of Education on Reevaluations..... 21

The Responsibility to Make an Annual Report on the Status of Each Child..... 22

The Responsibility to Insure that the Adequacy of Special Education Programs/Services are Evaluated..... 23

The Responsibility to Make an Annual Report on the Status of Programs, Services and Facilities..... 24

The Responsibility to Maintain Census Data..... 25

Procedural Due Process..... 27

Children with Handicapping Conditions..... 43

Basic Guidelines for Committee on the Handicapped Report..... 46

INTRODUCTION

As a member of a Committee on the Handicapped in New York State, you have a number of very important responsibilities. Committee members are responsible for making recommendations to the Board of Education that will meet the educational needs of handicapped children.

New laws and regulations have been enacted recently that affect the education of handicapped children. These laws and regulations safeguard the rights of handicapped children and their parents and increase the responsibility of local school districts to provide appropriate special education services. This legislation also strengthens and expands the duties of the members of the Committee on the Handicapped.

This handbook is designed to inform you about the responsibilities of the members of the Committee on the Handicapped under the new laws and regulations and to present to you some suggested procedures that may assist your Committee to function more effectively.

This handbook is the first part of a Data Bank prepared for each Committee on the Handicapped in the State by the State Education Department. The Data Bank is a collection of laws, regulations, state policy statements and publications that affect the education of handicapped children. It contains information that will be useful to you in making recommendations about the identification, evaluation, placement and reevaluation of handicapped children. The Data Bank is in the form of a looseleaf notebook so that new materials can be added and outdated materials can be removed.

One copy of this handbook should be added to the Data Bank sent to your Committee. Additional copies of the handbook are available to individual committee members from:

The New York State Education Department
The Office for Education of Children
with Handicapping Conditions
The Bureau of Program Development
55 Elk Street, Room 117
Albany, New York 12234

THE PURPOSE OF THE COMMITTEE ON THE HANDICAPPED

The Committee on the Handicapped has one overriding purpose - to find out what each handicapped child in the district needs and to recommend to the Board of Education the appropriate educational services and programs to meet the child's needs.

To do this, the Committee has six major responsibilities that are defined in Article 89 of the Education Law. On pages 12-26 of the handbook each responsibility is discussed and recommended procedures for carrying out these responsibilities are suggested. The primary responsibilities of the Committee are summarized below:

1. To make recommendations on classification, evaluation, and educational programs for children who require special education:

   a. To determine if a child has a handicapping condition and the category of classification.

   b. To determine the educational program needs of the child.

   c. To recommend a program/placement based on the handicapping condition and the child's educational needs.
   (Education Law, Section 4402 1.b.(3)(a-c))

2. To make recommendations on the frequency and nature of appropriate reevaluations of handicapped children by appropriate specialists.
   (Education Law, Section 4402 1.b.(3)(d))

3. To insure that the adequacy of existing special education services and programs is evaluated.
   (Education Law, Section 4402 1.b.(3)(e))

4. To inform the Board of Education about the adequacy of existing special education services and programs and to advise them about the unmet needs of handicapped children in the district.
   (Education Law, Section 4402 1.b.(3)(f))

5. To report annually to the Board of Education the status of each handicapped child and each child thought to be handicapped in the district.
   (Education Law, Section 4402 1.b.(2))

6. To maintain the census of all handicapped children annually.
   (Education Law, Section 4402 1.a.; Rules and Regulations of the Commissioner of Education, Section 200.12)

Since Committees on the Handicapped began to develop in the sixties, the duties assigned to the group have increased and changes have been made in the composition of the required membership. The new duties and the new members are intended to enable the Committee to more effectively meet its fundamental obligation - to identify the educational needs of the handicapped children and to see that these needs are met.

The purpose of the Committee on the Handicapped is defined by law, regulations and state policy statements. To understand why the Committees exist it is important to look at the origin of the Committee and the changes in the law and regulations that have shaped the Committee's responsibilities.

Looking Back (1960-1977)

During the early 1960's school districts in New York State began to use a team approach for identification, evaluation and placement of handicapped children. The intent was to bring together an interdisciplinary team of professional individuals to review the evaluation information and to recommend appropriate programs for handicapped children.

The team approach recognized the need to bring to bear many different professional points of view and types of expertise on the complex problems involved in educating the handicapped.

In 1968 the Regulations of the Commissioner of Education were amended to require the establishment of Committees in each district to make recommendations on the identification, diagnosis and placement of each handicapped child to the chief school officer. The Committee was also given the responsibility to make certain that handicapped children were reevaluated periodically, to report on the status of each child to the chief school officer and to review the adequacy of services and programs available to the handicapped.

In 1973 the responsibilities of the Committee were expanded. The Commissioner's Regulations were amended to require a written recommendation from the Committee before a handicapped child could be legally exempted from attending school.

Later that year, the Board of Regents published a position paper entitled The Education of Children with Handicapping Conditions. This paper emphasized the important responsibility that the members of the Committee have to handicapped children.

The paper explained the role of the Committee in the following way:

> The education of all children including those with handicapping conditions is initially and fundamentally a responsibility of the local school district. To implement this responsibility the Regulations of the Commissioner of Education require that the local school district appoint a local committee on the handicapped with a charge to insure

that necessary procedures for the identification, diagnosis, placement and annual review of the status and progress of every such child in the district are carried out. The work of this committee is focused primarily on assuring individual pupil programming, including a consideration of all diagnostic input, plus available and potential special education resources and facilities. The committee should be satisfied that the collection and maintenance of pertinent records and the coordination and improvement of educational services for these children are properly conducted in each district.

When federal legislation was enacted to require due process protection for handicapped children and their parents, the responsibilities of the Committee on the Handicapped were again expanded. In 1976 the Commissioner's Regulations were amended to require the Committee to notify parents before a child was identified or evaluated as handicapped and placed in a special education service or program.

At that time, the membership of the Committee was expanded to include a parent representative. Making a parent of a handicapped child a required member of the committee was important - it was an effort to make the consumer of special education services a part of the educational decision-making process.

Later that year, Chapter 853 repealed the old and added a new Article 89 to the Education Law which mandated the inclusion of a parent on the Committee and required Committees to seek information from the parents of the child as well as outside specialists before making educational decisions about handicapped children.

In December 1976, Commissioner's Regulations were adopted to implement the requirements of the new Article 89. These Regulations again expanded the role of the Committee. The new Article 89 emphasized the responsibility of the Board of Education to identify all handicapped children, children below the age of 5, as well as school-age children who had dropped out of school and were not being educated. Under the new Regulations, the Committee was required to maintain an accurate and up-to-date register of all handicapped children from birth through 21 years of age in the district.

The regulations also implemented the Individualized Education Program (IEP) called for by Public Law 94-142. In New York State the development of IEP's requires the cooperation of a variety of people including administrators, teachers, parents, support staff and members of the Committee on the Handicapped. Required participants at the planning conference shall at least include the pupil's teacher, the parent, a representative of the school district other than the child's teacher who provides or supervises special education and the child whenever appropriate. Additionally a professional who is knowledgable about the evaluation procedures used with the child must participate in the child's first IEP planning conference.

The IEP is developed in two major phases: Phase One occurs prior to placement and includes the identification of a child as handicapped and in need of special education, the evaluation of his/her present levels of educational performance, and a determination of the specific educational and related services needed by the child including the amount of contact he/she should have with non-handicapped children. Phase Two of the IEP process

includes the (IEP) planning conference and the implementation of the program and the evaluation of its appropriateness.

The Committee on the Handicapped plays an important role in the first phase of the IEP process. Before making a recommendation for placement, the Committee must recommend a classification for the child, determine the child's current level of educational performance and recommend the specific services which the child needs. These recommendations are the basis for the development of the first part of the child's IEP. Utilizing these specific recommendations, the IEP planning conference participants can identify specific goals and objectives for the child, define what will be done to meet these objectives and explain how the child's progress will be evaluated.

In November 1977, substantive changes were again made in the Commissioner's Regulations. These changes affected the Committee's responsibilities in the areas of due process, and the identification of children with learning disabilities.

Looking Ahead

After reviewing the changes in the law and the regulations that have expanded the Committee's role in recent years, it is clear that the Committee has many significant and important responsibilities.

It is essential that at the local district level and at the State level every effort be made to find ways to help Committees carry out their responsibilities effectively. To insure that the local educational agencies understand and implement the new legislation, the Office for Education of Children with Handicapping Conditions has established regional offices. A map of all such offices is included on the back cover.

This handbook and the Data Bank are ways that the State Education Department, Office for Education of Children with Handicapping Conditions is assisting members of the Committee to carry out their responsibilities.

SUGGESTIONS TO ORGANIZE THE COMMITTEE

Recommendations on Appointing the Members of the Committee

It is the responsibility of the Board of Education to annually appoint its members of the Committee on the Handicapped.

The Education Law mandates the inclusion of four members - a teacher or administrator of special education, a school psychologist, a school physician and the parent of a handicapped child, as well as such other members as the Board of Education shall designate. In selecting these members and additional members, it is recommended that the Board of Education consider the types of professional expertise needed by the Committee to carry out its responsibilities and seek out individuals who have the needed skills. In general, individuals with the following backgrounds and skills may function as appropriate members:

Experience in working with handicapped children in the classroom, at home, in the community, in counseling, guidance, medical situations.

Experience in working with individuals with a variety of different handicapping conditions.

Experience in working with parents of handicapped children.

Skill in analyzing and interpreting diagnostic test data.

Skill in assessing the educational needs of handicapped children.

Skill in evaluating educational programs.

Group process skills.

Knowledge of educational programs and services available in the district.

Knowledge of community resources available to the handicapped.

Appointing an Administrator of Special Education Who will Serve as Chairperson of the Committee

It is recommended that a professional within each district be designated by each school board as the administrator of special education. It would therefore be the responsibility of this individual to be designated by the Board to serve as Chairperson of the Committee on the Handicapped. This would place the accountability for the activities and recommendations of the Committee on a member of the professional staff who would be responsible for following through on all recommendations of the Committee.

Suggested Procedures To Develop an Annual Work Plan for the Committee

Once the Committee members have been appointed and the chairperson has been designated, it is suggested that the Committee decide what procedures and processes it will follow. To efficiently carry out all of the many responsibilities assigned to the Committee on the Handicapped, it is advisable for the members of the Committee to develop an Annual Work Plan which will define goals and objectives, and to outline how these objectives will be reached. It may also be helpful for the group to reevaluate, on an annual basis, how effectively the goals and objectives are being met.

1. The first step in developing a work plan for the group is to review the mandated responsibilities of the Committee as outlined on pages 13-27 of this handbook.

2. The workload of the Committee should also be reviewed. How many handicapped children are within the district's jurisdiction? How many requests for classification and placement can the Committee anticipate receiving? How many special education programs and services must be evaluated? How many children will be reevaluated? Have notification letters for parents been developed, and if so, do they need revisions? Has a register of handicapped children been developed, and if so, is it complete? What can be done to make the register more complete? Has a list of agencies and organizations that provide low cost evaluation and legal services been prepared for parents?

3. The specific skills, competencies and current work load of the members should also be reviewed. In the light of mandated responsibilities and the needs of handicapped children in the district, the group should consider who on the Committee will be assigned certain duties and roles.

4. Next it is recommended that the group develop a plan for the year that includes specific objectives to be attained and how these objectives will be reached. Issues such as the following can be resolved in the plan:

How frequently the Committee will meet.

Approximately how many cases will be reviewed at each meeting.

How many special programs and services will be reviewed during the year, and who will conduct the reviews.

When the annual report on the status of handicapped children will be prepared and who will do the work.

How program/placement recommendations will be made.

How information on children in need of classification, placement, reevaluation will come to the Committee's attention.

How test data and other information on a child's educational needs will be transmitted to the Committee.

How Committee recommendations will be transmitted to the Board of Education.

How recommendations made by the Committee will be transmitted to the child's teacher and others involved in the finalization of his/her individualized education program.

How the Board of Education will indicate to the Committee their response and follow-up on Committee recommendations.

Recommendations on Appointing Subcommittees

In cities and in districts with more than 200 handicapped children, Subcommittees may be appointed to carry out the work assigned to the Committee. It is up to the Committee on the Handicapped to recommend the number of Subcommittees needed in each district to the Board of Education. This recommendation should be based on the group's best estimate of the maximum workload that each Subcommittee can handle. It can be assumed that it would be extremely difficult for any Committee or Subcommittee to make the required recommendations, notifications and carry out other mandated responsibilities with a case load of more than 150 or 200 handicapped children.

The membership of the Subcommittees is to be similar to the membership of the Committee. They are to carry out the responsibilities as required in the Commissioner's Regulations and outlined in this handbook.

There are several responsibilities of the Subcommittees that differ slightly from the responsibilities of the Committee:

1. All Subcommittees are to report annually on the status of each handicapped child to the Committee on the Handicapped instead of making the report directly to the Board of Education. The status report to the Board of Education remains the responsibility of the Committee on the Handicapped.

2. In cities with populations fewer than 125,000, Subcommittees are to refer to the Committee on the Handicapped those cases wherein parents have not accepted Subcommittee recommendations.

3. If it is at all possible, it is recommended that Interdisciplinary Teams be operational in every school building in the district. In some districts the Team could be designated as a Subcommittee of the Committee on the Handicapped, if the membership is similar to the required composition of a Committee on the Handicapped. Good practice would require that Interdisciplinary Teams be organized at the building level to meet and discuss the educational status and program for every child in the building for whom there is concern about the child's educational progress and social adjustment.

RECOMMENDATIONS CONCERNING THE ROLES OF THE MEMBERS OF THE COMMITTEE

Once a Chairperson of the Committee on the Handicapped has been appointed by the Board of Education to assume administrative responsibilities and a work plan has been developed by the Committee, it is suggested that the group review the role that each permanent member will play in carrying out the duties of the group.

Ultimately, the role that each member assumes will be determined by many factors such as experience, background, and personal preference. What is presented here are some recommendations that may assist your Committee in defining appropriate roles for each member.

The Suggested Role of the Chairperson

The Administrator of Special Education and designated Chairperson of the Committee on the Handicapped could assume the following duties:

1. Preparation of agenda, scheduling meetings of the Committee on the Handicapped, assuring that the mandated members are in attendance at each meeting and that the parent of the child to be discussed is invited.

2. Arranging for the transmittal of all necessary test results and data to the Committee.

3. Insuring that parents are notified of Committee recommendations and afforded an opportunity to attend and address the Committee to present information.

4. Coordinating efforts to educate the public about the responsibilities of the Committee on the Handicapped and the rights and needs of children with handicapping conditions.

5. Insuring that appropriate specialists are identified and contacted for additional information that is needed.

6. Arranging for transmittal of Committee recommendations to the Board of Education and the parent.

7. Following up on Committee recommendations and insuring that these recommendations are acted upon in a timely fashion.

8. Scheduling conciliatory meetings of the Committee on the Handicapped with parents who disagree with Committee recommendations.

9. Processing appeals from recommendations of the Committee on the Handicapped to the Impartial Hearing Officer appointed by the Board of Education.

10. Insuring that an annual review is made of the status of each handicapped child and that mandated triennial examinations are conducted.

11. Arranging for representatives of the Committee on the Handicapped to visit public special education programs and approved private programs in the district and preparing reports on the adequacy of these programs for the Board of Education.

12. Insuring that the Committee assists in local child find activities.

13. Insuring that Committee recommendations are transmitted to classroom teachers to assist in the completion of individualized education programs.

14. Insuring that a register of all handicapped children who live in the district is maintained and updated annually.

15. Insuring that Subcommittees are appointed in cities and districts with more than 200 handicapped pupils.

The Suggested Role of the School Psychologist

1. Review the results of all psychological tests and data submitted to the Committee on each child.

2. Interpret these data for the other members of the group. Explain what the results of certain examinations mean in terms of behavior a child is likely to exhibit in the classroom. Explain what the results mean in terms of the educational needs of the child.

3. Comment on the adequacy of the psychological data on each child that have been submitted to the Committee. Recommend additional testing and examinations if necessary.

4. Seek information from the child's teacher and parents that reveals special psychological needs of the child.

5. Prepare a list of specific special education and related services recommended to meet the child's emotional and social needs. Using data that are before the Committee, explain why these services are needed.

6. In reviewing placement options available for the child, recommend the program that will appropriately meet the needs of the child as defined by the data before the Committee.

7. Prepare recommendations that can be used by the classroom teacher to prepare an individualized educational program for the child.

The Suggested Role of the Physician

1. Review all medical data that have been submitted to the Committee on each child.

2. Interpret these data to the group. Explain what the results of different medical examinations reveal about the special medical needs of each child.

3. Comment on the adequacy of the medical data before the Committee. Reguest additional medical examinations that are needed.

4. Question the child's teacher and parents about behaviors that each child exhibits that may indicate a medical problem.

5. Prepare a list of the special medical services that should be available to each child. Explain why these services are needed.

6. Disseminate information on child find to physicians in the community. Explain the responsibilities of the Committee to local doctors and encourage them to contact the local district about handicapped children who are not being educated.

The Suggested Role of the Teacher of Special Education

1. Review the results of all achievement tests and other educational data that have been submitted to the Committee. Interpret these data to the group.

2. Request additional educational tests and evaluations that are needed.

3. Question the psychologist(s) and physician(s) about the educational significance of psychological and medical data available on each child.

4. Seek information from each child's teacher and parents that can be used to define the educational needs of the child.

5. Make a list of all special education services required by each child. In reviewing placement options, recommend the program that appropriately meets the educational needs of the child.

6. Review Committee data that are to be transmitted to the classroom teacher. Make certain that the data can be used by the teacher to prepare an individualized education program.

7. Prepare checklists that can be used by Committee members in evaluating the adequacy of special education programs in the district.

8. Review/prepare referral forms used by teachers to refer to the Committee those children who may require special education services.

The Suggested Role of the Parent of a Handicapped Child

1. Become knowledgeable about the range of special education programs and services that are available to handicapped children in the district and about the mandated rights of handicapped children and their parents.

2. Question the professional members of the Committee about the meaning of psychological, medical and educational data that are before the Committee on each child. Make certain the data and the recommendations made based on these data are explained thoroughly.

3. Make certain that Committee recommendations are for programs and services that will meet the special needs which have been identified by the professionals.

4. Assume responsibility for encouraging parents to work with the Committee on behalf of their children.

5. When parents of handicapped children come before the Committee, interpret their concerns to the professional staff members, if necessary.

6. Become knowledgeable about the unmet needs of handicapped children in the district. Inform the Committee about these needs.

RESPONSIBILITY TO MAKE RECOMMENDATIONS TO THE BOARD OF EDUCATION REGARDING CLASSIFICATION, EVALUATION AND EDUCATIONAL PROGRAMS FOR HANDICAPPED CHILDREN

When it comes to the attention of the Committee that a child is or may be handicapped, it is up to the group to make recommendations to the Board of Education on classification, evaluation and educational program for the child.

This process is the first part of the development of the Individualized Education Program called for by P.L. 94-142 and the Rules and Regulations of the Commissioner of Education. Prior to making specific recommendations to the Board of Education on a child, the Committee must review all evaluation data available to determine the child's present level of educational performance. At the same time, based on these data, the Committee must identify the specific special education and related services needed by the child and determine the amount of contact that the child should have with non-handicapped children as a part of his educational program. The Committee must invite the child's parent to attend the Committee meeting and address the Committee regarding the child's educational needs.

During the process of developing recommendations on the identification, evaluation and placement of a child, the Committee has a number of legal responsibilities to parents. These include the responsibility to notify the parents in writing before a child is evaluated for possible special education placement or placed in a special education program and to obtain written consent from the parent for such an evaluation or placement. The Committee must also notify parents informally of their right to address the Committee concerning recommendations on identification, evaluation and placement. Formal written notices must be sent to parents when such recommendations are being made to the Board of Education. When biological parents are not available, guardians or foster parents are to receive notification from the school district and to exercise the child's educational rights.

Once the Committee has made its recommendations to the Board of Education and to the parents, the data that the group has collected and generated should be sent to the child's classroom teacher to assist him/her complete the child's IEP. Using these data, the teacher, the parent, another individual able to supervise or provide special education services, the child where appropriate, and other participants at the IEP planning conference can identify long range instructional goals, short term objectives and plan what will be done in the classroom to meet these goals and objectives.

To fulfill the responsibility to make recommendations on classification, evaluation and educational programs for each handicapped child, the following procedures are recommended:

1. Review Available Data.

Data that are currently available on the child must be reviewed by the Committee. These data could include medical reports, the results of psychological examinations, observational data, the results of speech and language exams, etc. Based on this review, the Committee must determine what additional education data are needed.

2. Notify the child's parents in writing that evaluation information is being sought on the child; obtain parental consent for a preplacement evaluation.

When additional evaluation data are being sought, the Committee must notify the child's parents or legal guardians. The notice sent to the parents must include a description of the proposed evaluation as well as how the information will be used. The parents must agree in writing to the preplacement evaluation. (see figure 1 page 31)

In the event the parent does not grant consent for evaluation, the Committee will request a hearing to show that there is a need to evaluate the child in accordance with 8 N.Y.C.R.R. 200.5 (a).

3. Inform parents of their right to address the Committee.

At the time of the above notice, or upon receipt of parental consent for evaluation, the Committee must also inform the child's parents of their right to address the Committee either in person or in writing concerning proposed classifications of the child, evaluation procedures, and available special education services and programs.

By involving the parents early in the decision-making process, it is likely that the need for formal hearings and other legal proceeding can be greatly reduced.
(see Page 27 -- Procedural Due Process for additional information.)

4. Review all tests and examinations that have been administered to each child to insure that the following nondiscriminatory procedures have been followed:

a. If the child does not speak or understand English well, the district must make every effort to test the child in his/her primary language.

b. The person(s) who examine the child must be professionally competent to administer the tests that are being given.

c. The child must be given tests that assess his developmental skills as well as intelligence tests.

d. If the child has a motor, vision or hearing problem, adjustments must be made in the testing procedures to make certain that an accurate evaluation is made of the child's abilities.

e. More than one test must be used to evaluate the child.

f. The results of the evaluation(s) must be reviewed by the full Committee on the Handicapped.

5. Insure that the confidentiality safeguards required by Federal Law and State Regulations are followed and that the confidentiality of all data collected and reviewed by the Committee is maintained:

   a. Do not reveal the contents of the records of individual children to anyone other than authorized personnel at the school who are involved in the child's education and the members of the Committee without obtaining the written permission of parents.

   b. Inform parents of their right to examine their child's records and to obtain copies at a reasonable cost.

   c. Insure that a list of staff members who have access to the records of individual children and a listing of agencies that have records on individual children in the district are maintained by the district and available to parents.

   d. The Board of Education should insure that personally identifiable data on children are not revealed in open meetings of the Board of Education or to any unauthorized persons.

6. Review the results of a physical examination

   In reviewing these results, the Committee should make certain that the child has received a recent and thorough examination. The examination should include testing for vision and hearing problems and any other physical disorder that might interfere with or require special modifications of the child's school program. On reviewing the results of the physical examination, it is up to the Committee to determine whether or not other more specialized medical examinations are required.

   In reviewing the results of the physical examination, the physician on your Committee is the key resource. He/she will be able to determine the adequacy of the examination the child has received and suggest other needed medical examinations. He/she will be able to look at the medical data collected on the child and tell you in layman's terms how medical problems will affect the child's behavior.

   The results of the physical examination may influence the educational recommendations that you make for the child. If the child has a hearing problem, he/she may need to be with a teacher who has some experience in this disability, he/she may need special tutoring, or his/her teacher may need special information and materials. If the child has a physical problem that makes him/her tire easily, he/she may need to be in a specially modified program.

   All of this information is important to the child's educational program. Make certain that medical information collected on the child is complete - use the physician on the Committee to interpret these data.

7. Review the results of an individual psychological examination or evaluation

An individual psychological examination or evaluation must be given to all school age children who come to your attention and are or are thought to be handicapped and in need of special education services. This must include more than one test or examination. An individually administered intelligence test in and of itself is not the same as an individual psychological examination although one must be administered when the handicap is for a "mental" reason.

The results of the individual psychological evaluation can be presented by the psychologist on your Committee to the group. It is recommended that the report include information on all of the different tests and data collected by the psychologist on the child. It should be presented in layman's language to the group and focus on emotional and intellectual factors in the child's life that shape his/her educational needs and his/her behavior in school.

When compiling information for an individual psychological evaluation, it is advisable for the school psychologist to use as many of the following resources as possible:

a. School health records and reports from the family physician or diagnostic clinics.

b. Pupil personnel records.

c. Anecdotal records.

d. Individually administered intelligence tests.

e. Group and individual tests of achievement.

f. Diagnostic-remedial tests and developmental inventories.

g. Projective tests and techniques.

h. Observation of behavior in the classroom and elsewhere.

i. Interviews with parents.

j. Conferences with teachers.

k. Reports from community agencies.

8. Review the child's social history

A social history must be compiled on all children (5-21) who come to the Committee's attention as potentially handicapped and in need of special education.

The social history provides information which enables the Committee to have a broad understanding of the total life picture of the child as related to his learning. Included might be data on early childhood development, significant medical facts, parental observation on social development, as well as information on family relationships and enviromental influence as they pertain to the child's education.

9. Review the results of other suitable examinations and pertinent material

The Committee may review, evaluate, or recommend examinations and accompanying reports from speech therapists, reading specialists, attendance officers, physical therapists, or other professionals.

10. Review information from the child's teacher

Information on the child's behavior and progress in school from his/her teacher must be presented to the Committee. This information should include the results of informal observations and testing, and comments on how the child relates to peers and adults.

If the child is already in a special education program, it is recommended that the teacher share with the Committee the progress the child has made toward meeting the goals and objectives of his/her Individualized Education Program.

11. Review information from other professionals

If the child has been examined or treated by other professionals, it is advisable for the Committee to contact these people and invite them to present additional information on the child to the group.

12. Arrange for additional tests or examinations that are necessary to determine the handicapping condition of the child and his/her educational needs

All examinations and tests recommended by the Committee must be provided for at school district expense.

13. Meet with the child's parents

As indicated in item #3, pg. 13, the Committee must notify the parents of their right to address the Committee concerning their child's identification, evaluation and placement. This dialogue with the child's parents enables the Committee to secure additional information on the child and also provides the group with an opportunity to explain the evaluation data collected on the child and the rationale behind Committee recommendations.

During this meeting, the Committee should discuss with the child's parents the development of the initial phases of the child's Individualized Education Program. The results of a thorough assessment should be reviewed and the specific educational and related services needed by the child should also be discussed with the parents. The amount of time that the child should spend with non-handicapped children during the school day should also be reviewed with the parents.

14. Identify the specific special education and related services needed by each child

Based on the evaluation data and the meeting with the parents cited in #11 above, the Committee must identify all special education and related services needed by each child. A list of such services should be prepared for each child with an explanation of why each service is needed. The Committee should also specify the amount of contact that the child should have with non-handicapped children in the provision of such services. This information constitutes the first part of the child's IEP. The needs of the child are to be the basis for the special service recommended.

15. Make an appropriate classification recommendation

Utilize the categories of handicapping conditions cited on pages 40-42 of the handbook to make this recommendation to the Board. Notify the child's parents of the recommendation.

a. Recommendations to classify a child as handicapped.

b. Recommendations to change a classification.

16. Make program/placement recommendations to the Board of Education

The Committee is required to make initial program/placement recommendations (when a child who is handicapped and in need of special education moves into the district and requires special service), and recommendations to change a child from a regular education program to a special education program (when a written request for such a change is received from the child's parents, doctor, teacher or other professional and deemed appropriate by the members of the Committee). These recommendations must be made within 30 school work days or 30 work days during the summer of the date that the child was referred to the Committee. The Committee must also make a number of other placement recommendations:

a. Recommendations to change a child from one special education program to another.

b. Recommendations to end a special education program and place the child in a regular educational program.

c. Recommendations to continue a child in a special education program for another school year.

d. Recommendations to make a change in the provision of a free appropriate public education to the child.

Because classification and program/placement recommendations are so important, it is advisable to take into account the following criteria:

a. The appropriateness of the specific special education and related services identified by the Committee as needed by the child.

b. The progress that the child is making toward meeting the goals and objectives of his/her Individualized Education Program, if the child is already in a special education program.

c. The mental ability of the child.

From the test results reviewed by the Committee and from the observations and comments of the classroom teacher and the child's parents, the Committee members should have an understanding of the academic or intellectual ability of the child.

d. The emotional needs of the child.

From the results of psychological tests, sociological assessments and parent and teacher input, a clear picture of the emotional needs of the child should emerge.

e. Special physical/medical needs of the child.

The results of the child's physical examination and other medical reports should indicate special physical/medical needs.

f. The opportunity to be with non-handicapped children and in the least restrictive environment

When reviewing placements available to handicapped children, the Committee should, as much as possible, recommend a program that will give the child an opportunity to be with non-handicapped children for some part of the school day.

For this reason special classes in public school buildings, if appropriate for the child, are preferable to special classes in segregated schools. Residential programs must be considered only when no suitable non-residential program is available to meet the child's needs.

Before recommending a program/placement, it is advisable for the Committee to make certain that all of the following have been done:

a. A thorough review of all current medical psychological and other data on the child has been made.

b. A review has been made of the child's Individualized Education Program if the child is already in a special education program and a recommendation has been made to continue or change the program.

c. All professionals who have currently evaluated or worked with the child have been consulted.

d. The child's parents have been consulted.

e. All possible program options available to the child have been discussed.

f. All of the members of the Committee have had the opportunity to evaluate the information available to them on the child and have expressed their opinions about an appropriate program.

g. A majority of the members of the full Committee have agreed to the proposed program in order for an official recommendation to be made.

h. The child's parents have been notified in writing of their rights to question or challenge the recommendation.

17. Notify the child's parents

When the Committee on the Handicapped is recommending any of the changes, continuations, or modifications mentioned in (16) to the Board of Education, the parents must be notified. This means that the Committee must send a formal written notice to the parents that includes the following information:

Describes the recommendation and explains why it is necessary;

Informs parents about the tests and reports that were used to identify the child's needs;

Tells parents that they have the right to examine and receive copies of their child's records. Copies must be available at a reasonable cost;

Informs parents how and when to request a hearing on the issue of the appropriateness of the recommendation of the Committee;

Informs parents how and when to challenge an adverse determination of a hearing officer;

*Informs parents that they have the right to an independent educational evaluation of the child and tells them where to go for such an evaluation;

Informs parents that they may be able to obtain free or low-cost legal and other relevant services at no expense to the district and includes information on where such services may be obtained;

Informs parents that unless the Commissioner or local board of education and the parent or legal guardian agree, the child will remain in his/her current educational program, or if applying for initial placement, be placed in a public school program until all legal proceedings have been completed.

To comply with the notification requirements, the Committee on the Handicapped must compile a list of agencies and facilities that evaluate the special needs of handicapped children. The purpose of the list is to assist parents in obtaining independent evaluations of their child's needs. The list can also be useful to parents of preschool age children who will be contacting your Committee for assistance in finding evaluation services and programs for their children. It is advisable for the list to be as complete as possible and to include as much information as possible on services and programs available to handicapped children in your area.

*(NOTE: The parent has the right to an independent evaluation at public expense if the parent disagrees with the evaluation made by the school district. However, the school district may initiate a hearing to show that its evaluation is appropriate. If the impartial hearing officer's recommendation is that the evaluation is appropriate, the parent has a right to an independent educational evaluation but not at public expense.)

18. Send data and recommendations to child's classroom teacher

Once Committee recommendations have been approved by the Board of Education and the child's parents, it is important that these data be transmitted to the child's classroom teacher to assist him/her to complete the development of the Individualized Education Program.

Prior to the IEP planning conference, the child's parents must again be notified by the school district to insure their involvement in the planning process. Other participants of the planning conference are to include the child, if appropriate, and another district staff member who is qualified to supervise or provide special education services. When the child has been evaluated for special education placement for the first time, a member of the evaluation team or a person who is knowledgeable about the evaluation procedures used with the child must also attend the IEP planning conference.

THE RESPONSIBILITY TO ADVISE THE BOARD OF EDUCATION ON THE REEVALUATION OF HANDICAPPED CHILDREN

The Committee is responsible for advising the Board of Education on the reevaluation of handicapped children who have been placed in special education programs (Education Law, Section 4402.1.b(3) (d)). The reason that the Committee is required to do this is to protect handicapped children from inappropriate, long term special education placements and to make certain that each child's education program is changed and modified as he/she grows and develops.

To make appropriate recommendations on reevaluations, it is recommended that the Committee receive information from the child's teacher on the progress the child is making toward meeting the goals and objectives of his/her Individualized Education Program. To provide this information to the Committee, at least the teacher and the parent and if possible other participants of the planning conference shall review each child's Individualized Education Program annually and submit a report to the Committee.

It is recommended that each committee maintain a file of Individualized Education Programs. When an IEP is first finalized for a child, it should be sent to the committee on the handicapped. Then as revisions are made, and as the progress that the child is making toward reaching his/her goals and objectives is evaluated, progress reports should be sent to the committee.

These data should form the basis for determining the need for periodic reevaluations of children. An annual review of each child's IEP is mandated; children in special education programs must receive a thorough reevaluation at least once every three years.

Recommendations on the Nature of the Reevaluations: The Appropriate Specialist

Committee members should use their judgment in recommending what type of reevaluation will be made of each child, and who will do the testing. It is suggested that certain information be used by the members of the Committee to make these judgement:

1. The Individualized Education Program that has been established for the child in his/her special education program.

The Individualized Education Program established for the child should be a major factor in determining the type of reevaluation to be made, and who will do the job.

2. The nature of the child's handicapping condition.

   The child's handicapping condition - its nature and severity - are key factors to be considered in recommending reevaluation. If the child is mentally retarded, he/she should receive a psychological evaluation periodically by a qualified psychologist; if he/she has a perceptual problem, he/she should be reexamined by a specialist in learning disabilities; if the child is legally blind and special education goals for him/her include the ability to travel independently and read Braille, a peripatologist and a certified teacher of the blind will be able to evaluate the child's progress effectively.

3. The information that is needed by the Committee to determine the appropriateness of the child's program.

   Before a specific reevaluation is recommended, it is advisable for the Committee to consider what information is needed to determine whether or not the child's education program is appropriate. Tests that will indicate specific behavioral changes in a child - tests that can be administered by educational specialists may, in certain cases, be more useful than medical/psychiatric examinations.

4. New Information.

   New information that comes to the Committee's attention once the child has been placed in a program should be a factor in considering the type of reevaluation the child is to receive. If his/her teacher or the child's parents suspect a vision or hearing problem, tests for problems in these areas should be a part of the child's reevaluation.

RESPONSIBILITY TO MAKE AN ANNUAL REPORT ON THE STATUS OF EACH HANDICAPPED CHILD AND CHILD THOUGHT TO BE HANDICAPPED WHO LIVES IN THE DISTRICT

Once each year your Committee must prepare a report on the status of all handicapped children and all children who are thought to be handicapped who live in the district (Education Law, Section 4402,1.b(2)). It is recommended that the Committee's annual status report be based on the annual review of each child's IEP. By law the progress that the child is making toward meeting the goals and objectives of his/her IEP must be reviewed annually. Information from the annual review of the IEP should be sent to the Committee on the Handicapped, so that the Committee has a sound and rationale basis for making recommendations on continuing or changing a child's special education placement.

The Committee's annual status report is a summary for the Board of Education of the educational placements of all handicapped children in the district, including those who are being educated in nonpublic schools and in programs administered by other agencies.

It is suggested that the report bring to the attention of the Board of Education the unmet needs of children thought to be handicapped, but who have not been formally classified and/or placed in an appropriate educational program. At this time information on handicapped children who are receiving some but not all of the educational and related services recommended by the Committee may be reviewed with the Board of Education.

It is recommended that the report include the following statistical data and information:

1. Data

   a. Identification number, age, handicapping condition and current educational and related services being made available to each handicapped child who is a resident of the district, ages 0-21. (This includes children being educated in other school districts, BOCES, approved private schools, and agency programs - either in or out of state.)

   b. Information on whether the child will be continued in his/her current special education program or placed in a different program during the next school year.

   c. Information on handicapped children who are not being educated including preschool age children for whom no services are available, adolescent dropouts, and children who have been legally exempted.

   d. Information on names, ages and handicapping conditions of children who are in the opinion of the Committee receiving some, but not all of the special education and related services that they need, such as additional speech training, occupational training, physical therapy, etc.

2. Suggested Additional Information: Identification of Unmet Needs/Recommendations

   a. A summary of additional programs/services needed in the district to fully meet the educational needs of all handicapped children.

   b. Recommendations on steps that can be taken by the district to identify unserved/underserved handicapped children and to fully meet their needs.

RESPONSIBILITY TO INSURE THAT THE ADEQUACY OF SPECIAL EDUCATION PROGRAMS/SERVICES ARE EVALUATED

The Committee is responsible for seeing that the adequacy of special education programs and services is evaluated periodically (Education Law, Section 4402.1.b(3)(e)). To do this, it is recommended that the members of the Committee or their designees observe the special education programs as well as agency and approved private schools which are educating handicapped children who live in the district. To make impartial evaluations, it is advisable for the members to use a checklist to evaluate existing programs.

In developing an appropriate checklist it is advisable to include the following items:

1. Are the Commissioner's Regulations on special class sizes and age span being observed?

2. Are the Regulations on minimum hours of instruction for handicapped children being observed?

3. Is the teacher appropriately certified?

4. Have Individualized Education Programs been prepared for all handicapped children in the program?

5. Have parents been involved in the preparation of the plans?

6. If the program is in an approved private school, is it comparable with special programs in the public schools?

7. Do the handicapped children in the program have some opportunity to be with nonhandicapped children?

8. Is the classroom atmosphere supportive of the handicapped child?

9. Is the program planned to allow for growth in a range of areas including the cognitive, psychomotor, and perceptual?

10. Are the children in the program benefiting from occupational/vocational training?

11. Are appropriate special instructional materials available to the child and the teacher?

12. Is the classroom of adequate size for the special program?

RESPONSIBILITY TO MAKE AN ANNUAL REPORT ON THE STATUS OF PROGRAMS, SERVICES AND FACILITIES

Under Education Law, Section 4402.1.b(3)(f), the Committee is responsible for preparing and presenting to the Board of Education an annual report on the status of programs, services and facilities in the districts that are supported in part by state aid. The report must be presented to the Board on/or before October 1, and include data from the preceding school years.

Suggested Content

After having evaluated all programs and facilities in accordance with procedures recommended on page 22 of this handbook, the Committee prepares the Annual Report. The report should include the following information:

1. A description of the expenditure for programs for handicapped pupils eligible to receive state aid.

In this part of the report, it is advisable for the Committee to describe how much money was claimed by the district to educate eligible handicapped pupils and how such monies were spent. Education Law, Section 3602, subdivision 10a, clearly states that all state aid claimed to educate handicapped children must be utilized by the district for local special education programs and services that meet the needs of such children and conform to the program requirements contained in the Commissioner's Regulations.

2. The numbers of pupils served in the programs and how they were identified.

3. An evaluation of the results obtained from the operation of such programs.

It is recommended that this section of the report include information on the progress made by the pupils cited in (2) above. It is appropriate to utilize data from Individualized Education Programs of these pupils to provide factual and accurate information on the adequacy of local programs being supported with state aid.

Suggested Procedures

1. The district's administrative office may be contacted for records of the amount of state aid claimed by the district to educate handicapped pupils and a record of how these monies were spent. Information on the number of handicapped pupils in such programs should also be collected by the Committee.

2. All local special education programs supported in part by state aid are to be evaluated by the Committee for conformity with the Commissioner's Regulations.

3. At the end of the school year information on the progress that each child in a special education program has made should be reviewed by the Committee.

4. The Annual Report must be drafted and presented to the Board of Education before October 1 of each school year.

5. The Report must be kept on file in the district and be available for inspection by the Commissioner of Education.

RESPONSIBILITY TO MAINTAIN A REGISTER OF ALL HANDICAPPED CHILDREN IN THE DISTRICT

School districts are responsible for identifying all handicapped children from birth through twenty-one years of age who are residents of the district. Districts are responsible for implementing procedures to assure the availability of statistical data to readily determine the status of each handicapped child in the identification, location, evaluation, placement and program review process. The data that are collected must be reported by September 15 to the Committee on the Handicapped. The Committee is responsible for maintaining and revising annually, a register of all handicapped children.

Data requirements: Procedures shall be designed to record data on each child and shall include at least the following types of data:

- Child's name, address and birthdate.
- Child's parents' names and address(es).
- Child's suspected handicap(s).
- Dates of referral, evaluations, recommendations of the Committee on the Handicapped, actual placement and annual program reviews.
- Physical location where child is currently receiving an educational program.
- The data shall be organized so that it can readily be determined whether the child is receiving an appropriate education at public expense, a partial education or no education at all.
- The reason why the child is not receiving an appropriate public education shall be recorded.

Data collection: Data regarding each child with a suspected or confirmed handicap shall be obtained in accordance with the following policies:

- All persons involved in the collection of data shall have received prior training and written information regarding the procedures to be followed in collecting the data.
- Should the district choose to conduct a door-to-door census, all census takers shall have proper credentials that clearly identify themselves as census takers representing the school district.
- The school district shall assure confidentiality and security of child data when requesting that a person or agency serving handicapped children provide information regarding children who are not enrolled in school and who may need special education services.

Data reporting: The reporting of child data shall be conducted in accordance with the following policies and procedures:

- School districts shall prepare summary reports of child data, including numbers of children who are: (a) unserved and the reasons they are unserved; and (b) served. Such summary reports shall be on file within the school district.
- A summary of the child data shall be submitted by local school districts to the State Education Department on prescribed forms and in the prescribed manner.

The board of education or trustees of each school district, with the exception of cities with 125,000 or more inhabitants, shall report the register of handicapped children to the district superintendent of the supervisory district in which the district is located, by the first of October of each year.

State operated and supported schools for the deaf, blind and severely physically handicapped are required to maintain their own census data and to submit such data directly to the Commissioner of Education on forms prescribed by the Commissioner. (Education Law, Section 4402.3.a; Rules and Regulations of the Commissioner of Education, Section 200.12.)

It is also suggested that the Committee may assist the district in identifying handicapped children and conducting some, if not all, of the following activities:

Collect and see that public awareness materials are disseminated in the community;

Invite representatives of other agencies that serve the handicapped to come to your meetings so that the Committee can learn more about the services the agencies provide, obtain information on unserved children, and work with the agencies to see that the best use possible is made of existing services and programs; Such representatives may not attend a Committee meeting where an individual child's case is being discussed unless the parent consents.

Present information on handicapping conditions and available special education services at PTA and other community meetings;

Serve as a contact group for parents who feel their handicapped children are not being educated;

Explore funding sources for preschool programs for handicapped children;

Work with local youth leaders to encourage handicapped adolescents who have dropped out of school to return to school.

PROCEDURAL DUE PROCESS

Due process procedures which protect the educational rights of handicapped children are required by Federal and State law. The procedures are designed to insure that appropriate and timely decisions are made in identifying, evaluating, placing and periodically reevaluating the educational needs of handicapped children.

The intent of the procedures is to protect children from inappropriate educational decisions. Full implementation of the due process procedures called for by Federal and State law will insure that many different individuals have input into critical decisions that affect the lives of handicapped children. At the same time, under these procedures all major educational decisions can be questioned and formally challenged by parents or legal guardians.

Under the due process requirements of Federal and State law, local school districts and parents must assume new responsibilities. These responsibilities are reflected in four interrelated areas: notification, parental consent, hearings and appeals.

Notification

Section 200.5 of the Regulations of the Commissioner of Education addresses four separate but interrelated types of notices: The informal notice to parents, the pre-evaluation notice to parents, the formal notice to the parent or guardian informing them of a recommendation to the Board of Education, and the notice to the Board of Education informing them that a child may have a handicapping condition and require special education. Each of these notices has a specific purpose and must contain certain information. A response must be made to the formal notices within specified time frames.

1. Request to evaluate a child

A child's parent or legal guardian, a physician, or a professional member of the school district's staff can send a written notice to the Board of Education informing them that there is reason to believe that a child may possess a handicapping condition and require special education. When the Board of Education receives such a notice, a determination of whether or not the child is handicapped and in need of special education services must be made within 30 school days of the receipt of the notice. If the child is found eligible for special education placement, it is up to the Board of Education to arrange for a placement within a further period of time not longer than 30 school days from the time the classification is made. If the request is made during the summer months, the days are defined as all days except Saturday, Sunday and holidays.

2. The informal notice to parents

The informal notice to parents is a first step in due process. It must be sent to parents when it first comes to the attention of the Committee on the Handicapped that a child's classification, evaluation or educational program should be changed or continued. At this time it is up to the Committee on the Handicapped to contact the child's parents, either by letter or telephone, tell them about the proposed change or continuance and inform them that they have the opportunity to communicate with the Committee either in a letter or in person to discuss their child's educational needs.

3. The pre-evaluation notice to parents

The Committee on the Handicapped must send a written notice to parents and obtain written parental consent before the school district begins an evaluation of the child to determine whether or not the child requires special education. The notice must include the following information:

- A description of the proposed evaluation
- A description of how the test data will be used
- A statement that parental consent is required prior to such an evaluation and a form for the parent or guardian to sign indicating whether or not he/she grants consent for the evaluation
- A description of the procedures that are available to the parent or guardian and to the school district if consent for the evaluation is withheld by the parents.

Parents may request an informal conference with the chief school officer or his designee to question the proposed evaluation. The parents may call for a hearing to challenge the determination of the chief school officer or his designee within 10 school days. See section 200.5 (a) of the regulations.

4. The formal notice to parents informing them of a recommendation to the Board of Education

The Committee on the Handicapped must send a formal written notice to parents when it has received all appropriate evaluation data on a child and made a recommendation to the Board of Education to:

- Classify a child as handicapped and in need of special education services
- Make a change in the classification or educational placement of the child, or
- Continue a child's educational placement, or
- Make a change in the provision of a free appropriate public education to a child

The notice must contain the following information:

- Describe and explain the recommendation being made to the Board of Education
- Describe the tests or reports upon which the recommendation is based
- Inform parents that the school files, records and reports which pertain to the child will be available for inspection and that copies may be made at a reasonable cost.
- Describe the parent's right to obtain a hearing and notify them as to procedures for requesting a hearing.
- Summarize the procedures available to parents to appeal the decisions resulting from a formal hearing
- Inform the parents that they have the opportunity to obtain an independent educational evaluation of their child and where such an evaluation may be obtained*
- Indicate that free or inexpensive legal services may be available to parents and where such legal services may be obtained.
- Indicate that the child will remain in his current educational placement, or if applying for initial admission, be placed in a public school program until all challenges and appeals between the parents and the school have been resolved

*The notice must explain that the parent has a right to an independent evaluation at public expense if he/she disagrees with the evaluation of the local school district. However, the school district may initiate a hearing to show that its evaluation is appropriate. If the hearing officer concludes that the school district's evaluation is appropriate, the parent retains the right to obtain an independent evaluation, however not at public expense.

To challenge a recommendation made by a Committee on the Handicapped to a Board of Education, the parent or legal guardian must request a hearing in writing within 10 school days of the receipt of the notice discussed previously.

Consent

Consent means obtaining written permission from a child's parent or legal guardian, prior to initiating an action that will affect a child. Consent occurs when a parent or legal guardian signs a written statement agreeing to the proposed action. There are specified conditions uner which consent must be obtained from parents or guardians by local school districts. Certain procedures and timelines must be followed when consent is withheld.

1. When parental consent must be obtained

It is the responsibility of the Committee on the Handicapped to seek parental consent in the following instances:

(a) Before initiating a preplacement evaluation for the potential placement of a child in a special education program.
(b) Before initially placing a child in a special education program.

2. When consent for a preplacement evaluation is denied by the paren:
(See figure 1 page 31)
(a) If the parent or legal guardian does not give his/her written consent to evaluate the child, he/she may request an informal conference to discuss the proposed evaluation. The chief school officer may delegate authority to the principal of the school that the child attends to hold the informal conference. The purpose of the conference is to attempt to mediate the disagreement between the parents and the local school district. At the conference, parents have the opportunity to verbalize their concerns, to ask questions, and, if they so desire, to bring a lawyer or an advisor of their choice. After the conference, the principal makes a decision concerning the evaluation of the child. If the parent disagrees with the principal's decision, he/she can request an impartial due process hearing.

(b) If the parent does not request or attend the conference, the school must initiate a hearing to determine whether or not there is sufficient basis to warrant testing the child.

3. When consent for placement in a special education program is denied

(a) If the parent or legal guardian does not consent to the special education placement recommended by the Committee on the Handicapped, he or she may request an Impartial Due Process hearing to challenge the recommendation. The request for a hearing must be made in writing within 10 school days of the receipt of the notification of the recommendation.

(b) If the parent does not give consent and does not request a hearing, the school district may initiate a hearing to insure that the child is receiving an appropriate education.

Hearings

Impartial due process hearings may be requested in writing by parents or guardians or local school districts when disputes about the provision, continuation or change in a handicapped child's education cannot be resolved informally. Part 200.5 of the Regulations of the Commissioner contains specified timelines for making such requests and procedures for conducting the hearing. (See Figure 2) page 32.

Figure
1

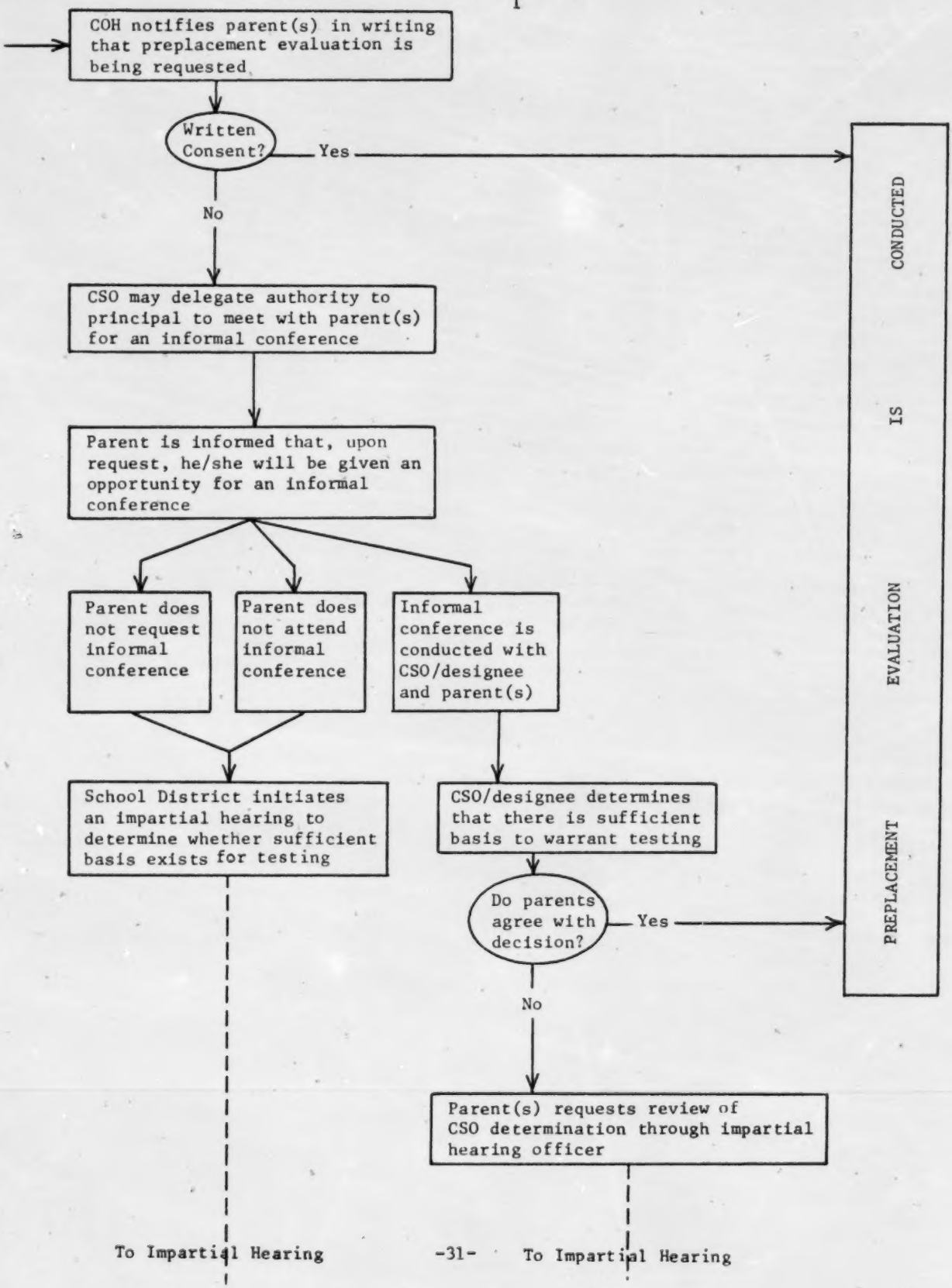
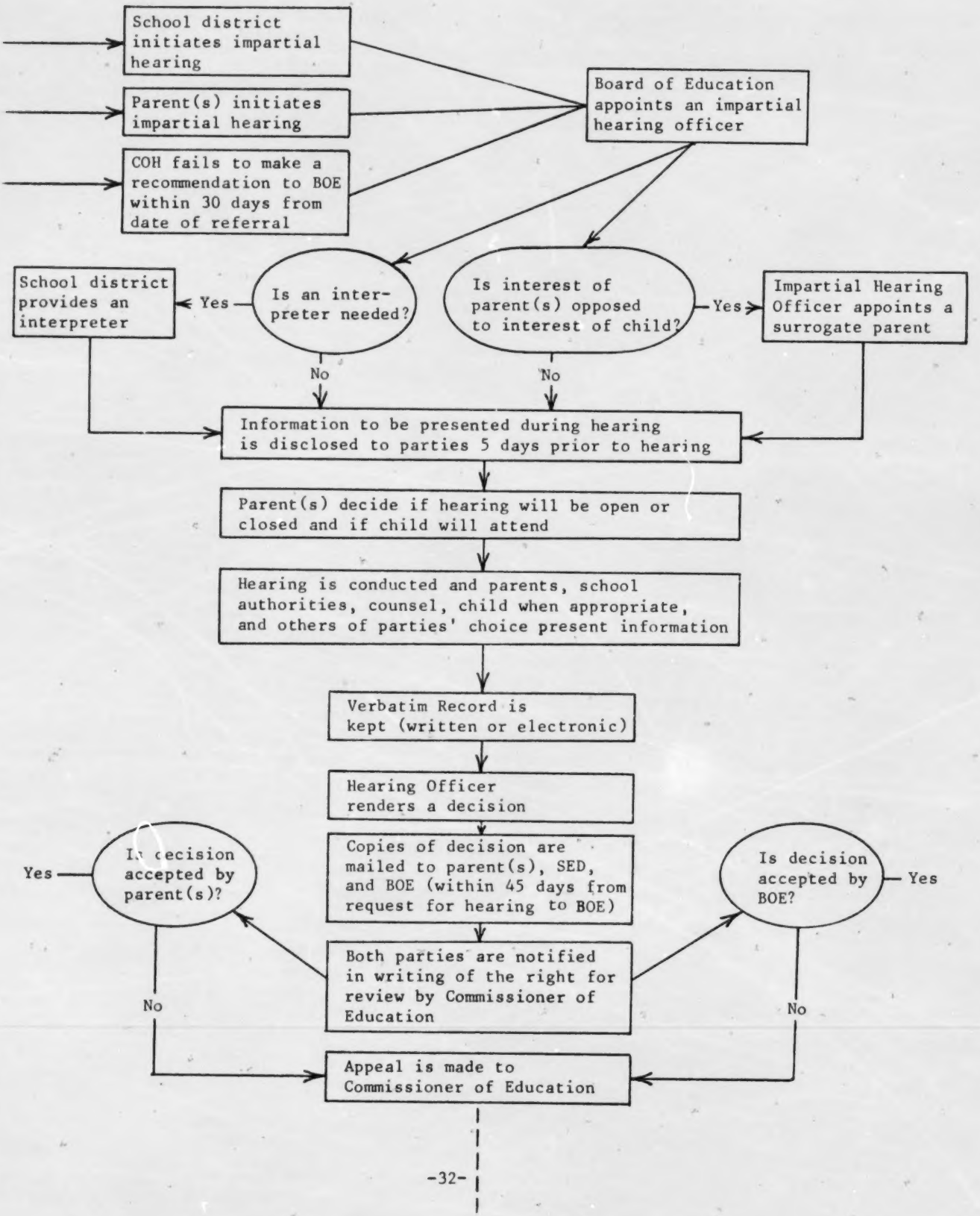

COH notifies parent(s) in writing that preplacement evaluation is being requested
Written Consent?
Yes
No
CSO may delegate authority to principal to meet with parent(s) for an informal conference
Parent is informed that, upon request, he/she will be given an opportunity for an informal conference
Parent does not request informal conference
Parent does not attend informal conference
Informal conference is conducted with CSO/designee and parent(s)
School District initiates an impartial hearing to determine whether sufficient basis exists for testing
CSO/designee determines that there is sufficient basis to warrant testing
Do parents agree with decision?
Yes
No
Parent(s) requests review of CSO determination through impartial hearing officer
PREPLACEMENT EVALUATION IS CONDUCTED
To Impartial Hearing
To Impartial Hearing

Figure
II


School district initiates impartial hearing
Parent(s) initiates impartial hearing
COH fails to make a recommendation to BOE within 30 days from date of referral
Board of Education appoints an impartial hearing officer
School district provides an interpreter
Yes
Is an interpreter needed?
No
Is interest of parent(s) opposed to interest of child?
Yes
Impartial Hearing Officer appoints a surrogate parent
No
Information to be presented during hearing is disclosed to parties 5 days prior to hearing
Parent(s) decide if hearing will be open or closed and if child will attend
Hearing is conducted and parents, school authorities, counsel, child when appropriate, and others of parties' choice present information
Verbatim Record is kept (written or electronic)
Hearing Officer renders a decision
Copies of decision are mailed to parent(s), SED, and BOE (within 45 days from request for hearing to BOE)
Yes
Is decision accepted by parent(s)?
Is decision accepted by BOE?
Yes
Both parties are notified in writing of the right for review by Commissioner of Education
No
No
Appeal is made to Commissioner of Education

1. When the local school district may request a hearing

(a) To show that its evaluation of a child is appropriate when a parent or legal guardian disagrees with the local school district's evaluation and requests an independent evaluation at public expense.

(b) To determine whether there is sufficient basis for evaluating a child or for initially placing a child in a special education program when a parent or legal guardian withholds consent.

2. When the parent or legal guardian may request a hearing

(a) To challenge the determination of the chief school officer or his designee concerning the need for a preplacement evaluation of the child.

(b) When the Committee on the Handicapped fails to make a recommendation to the Board of Education and to the parents within 30 school days of the date that the child was first referred to the Committee for evaluation and recommendation.

(c) When the parent or guardian wishes to challenge a recommendation of the Committee on the Handicapped to:

- Classify a child as handicapped and in need of special education
- make a change in the classification or educational placement of the child
- Recommend continuing the child's educational placement
- Recommend a change in the provision of a free appropriate public education for the child

Requests for a hearing to challenge a recommendation of the Committee on the Handicapped must be sent to the Board of Education in writing within 10 school days of the receipt of a written notice of the proposed action being challenged.

The following procedures must be followed when conducting an Impartial Due Process Hearing:

(a) The Board of Education or Trustees shall appoint an impartial hearing officer to conduct the hearing. The hearing officer shall be authorized to administer oaths and to issue subpoenas in connection with the administrative proceeding before him.

(b) A written or electronic verbatim record of the proceeding before the hearing officer shall be maintained and made available to the parties.

(c) At all stages of the proceeding, where required, interpreters of the deaf or interpreters fluent in the dominant language of the child's home shall be provided at district expense.

(d) The impartial hearing officer shall preside at the hearing and shall provide all parties an opportunity to present evidence and testimony.

(e) The parties to the proceedings may be represented by legal counsel, and may be accompanied by any other persons of their choice.

(f) Unless a surrogate parent shall have been previously assigned, the impartial hearing officer shall determine whether the interests of the parent are opposed to or inconsistent with those of the child, or whether for any other reason the interests of the child would best be protected by assignment of a surrogate parent, and where he so determines, the impartial hearing officer shall designate a surrogate parent to protect the interests of such child.

(g) The hearing should be closed to the public unless the parent requests an open hearing.

(h) The parents, school authorities and their respective counsel shall have an opportunity to present evidence and to confront and question all witnesses at the hearing. Each party shall have the right to prohibit the introduction of any evidence the substance of which has not been disclosed to such party at least five school days before the hearing.

(i) The parents shall have the right to determine whether the child shall attend the hearing.

(j) The impartial hearing officer shall render a decision and mail a copy of the decision to the parents and to the Board of Education not later than 45 calendar days after the receipt by the Board of Education of a request for a hearing. The decision of the impartial hearing officer shall be based solely upon the record of the proceeding before the impartial hearing officer, and shall set forth the reasons and the factual basis for the determination. The decision shall also include a statement advising the parents and the Board of Education of the right to obtain a review of such decision by the commissioner pursuant to the provisions of Education Law section 4404, and Public Law 94-142.

Appeals

Under Parts 279 and 275 of the Regulations of the Commissioner of Education, either the parents, or guardians of a handicapped child or the Board of Education, may obtain review of the hearing officer's decision by appealing to the Commissioner. (See figure 3) page 35

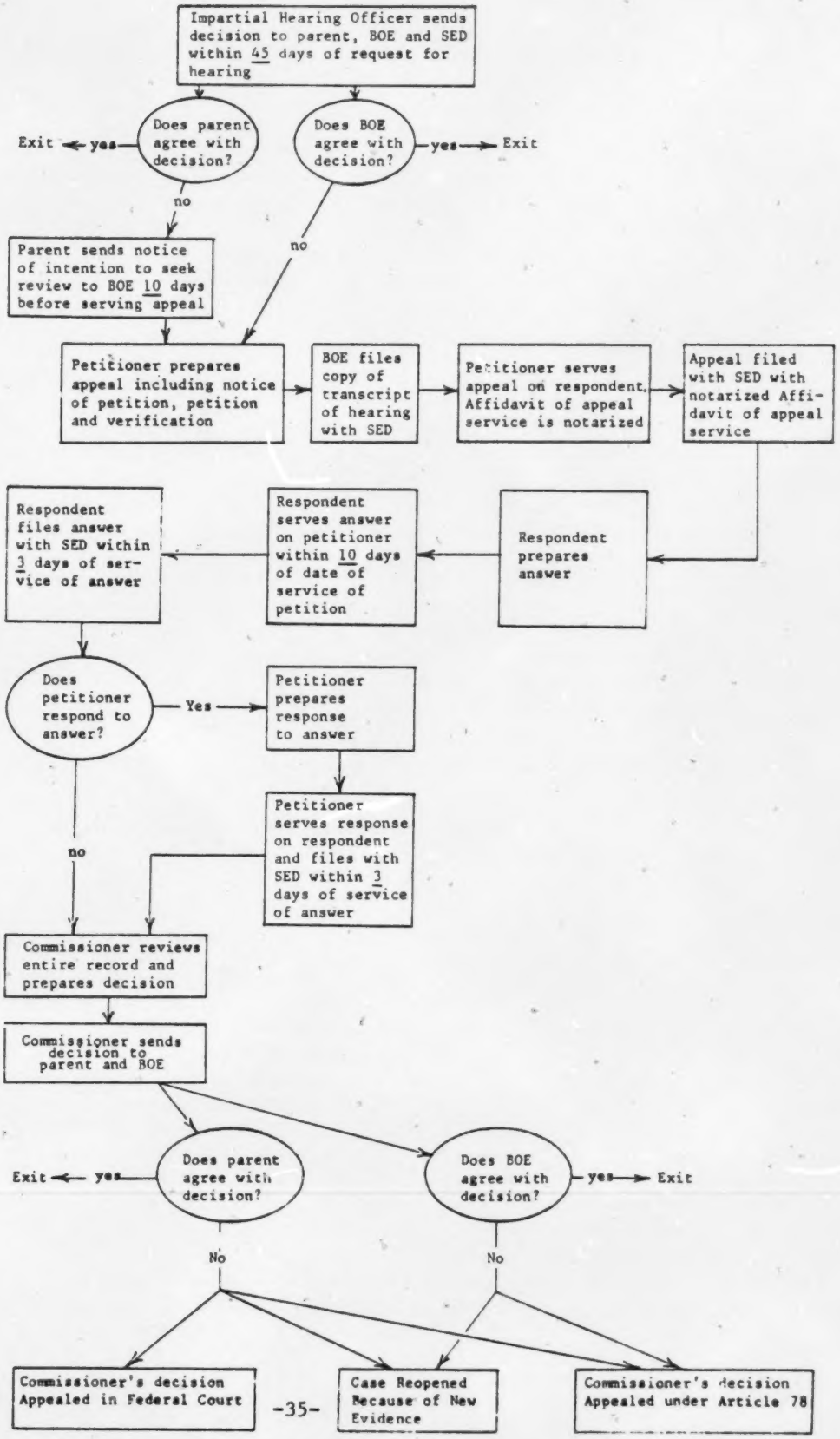
1. Definitions

(a) The petitioner is the party who is appealing the decision of an Impartial Hearing Officer.

(b) The respondent is the party whose action is being challenged by the petitioner.

(c) Service of Pleadings means hand delivering the petition to the respondent by someone over 18 years of age who is not a party to the appeal; pleadings other than the petition may be served by mail.

Figure
III


Impartial Hearing Officer sends decision to parent, BOE and SED within 45 days of request for hearing
Does parent agree with decision?
yes
Exit
Does BOE agree with decision?
yes
Exit
no
no
Parent sends notice of intention to seek review to BOE 10 days before serving appeal
Petitioner prepares appeal including notice of petition, petition and verification
BOE files copy of transcript of hearing with SED
Petitioner serves appeal on respondent. Affidavit of appeal service is notarized
Appeal filed with SED with notarized Affidavit of appeal service
Respondent prepares answer
Respondent serves answer on petitioner within 10 days of date of service of petition
Respondent files answer with SED within 3 days of service of answer
Does petitioner respond to answer?
Yes
Petitioner prepares response to answer
Petitioner serves response on respondent and files with SED within 3 days of service of answer
no
Commissioner reviews entire record and prepares decision
Commissioner sends decision to parent and BOE
Does parent agree with decision?
yes
Exit
Does BOE agree with decision?
yes
Exit
No
No
Commissioner's decision Appealed in Federal Court
Case Reopened Because of New Evidence
Commissioner's decision Appealed under Article 78

2. Ground Rules

(a) The person making the appeal, the petitioner, must be personally aggrieved; the petition must be made in the name of the party who has suffered an injustice, either the Board of Education, or the parent on behalf of his child.

(b) The appeal must be made within 30 calendar days of the receipt of the decision of the Impartial Hearing Officer.

(c) The appeal must be typed, double spaced, on 8½ x 11" paper.

(d) Oral argument is not permitted.

(e) All appeals must be addressed "To the Commissioner of Education" and follow the procedures listed below.

3. Appeal Procedures

(a) Sending the Notice of Intention to Seek Review
If the parent or legal guardian is appealing the decision of an impartial hearing officer, he/she must send a Notice of Intention to Seek Review to the Board of Education. The notice must be in the form set forth on page 38. It must be sent at least 10 calendar days before serving the petition. A copy of this notice must be included in the appeal. A parent must bring an appeal within 40 calendar days of receipt of the decision of the hearing officer. A Board of Education must bring an appeal within 30 calendar days of the date the decision was made.

(b) Preparing the Appeal
The petitioner (either the parent or legal guardian or the Board of Education) prepares the appeal. The appeal must include the following:

- The notice with petition which is to be sent in the format presented on page 39.
- The petition which is to include any written argument, memorandum of law and documentary evidence.
- The verification in which the petitioner swears to the truth of the charges. It is to be in the form presented on page 40.

(c) Serving the Appeal
The petitioner must have the appeal hand delivered to each named respondent by someone over the age of 18.

(d) Notarizing an Affidavit of Personal Service
The person who has hand delivered the appeal must sign an Affidavit of Personal Service and have it notarized. The affidavit is to be in the form presented on page 41. A copy of this affidavit is to go with the appeal to the Commissioner of Education.

(e) Filing the Appeal with the Commissioner of Education

- The petitioner must file with the Office of Counsel of the State Education Department the following:

. The appeal in its entirety as explained in 3(b)
. A copy of the Notice of Intention to Seek Review, if the petitioner is a parent or legal guardian
. The Affidavit of Personal Service

(f) Preparing an Answer to the Petition
The respondent must prepare an answer to the charges contained in the petition. The respondent may agree with the charges in the petition. If this is the case he/she will prepare a statement which expresses agreement with the petitioner. The respondent may disagree with the petitioner and present written argument, a memorandum of law and any additional documentary evidence.

(g) Serving the Answer on the Petitioner
The respondent must serve the answer on the petitioner within 10 calendar days of the date of receipt of the petition. It may be hand delivered or served by mail. An Affidavit of Personal Service (See page 41) or service by mail (See page 42) must be secured and notarized. A verification must be included.

(h) Filing the Answer with the State Education Department
Within two (2) calendar days of the date that the answer was served on the petitioner, the respondent must file the answer with the Office of Counsel, State Education Department. The Affidavit of Personal Service or service by mail must accompany the answer as well as a verification.

(i) Responding to the Answer
The petitioner may make a response to the answer. The response must be served on the petitioner and filed with the State Education Department within three (3) calendar days after service of the answer. An Affidavit of Personel Service or of service by mail and a verification must be included.

(j) Filing a Record of the Proceedings before the Hearing Officer with the State Education Department
It is the responsibility of the Board of Education to file with the Office of Counsel, State Education Department, a copy of the written transcript of the record before the hearing officer and the decision of the hearing officer.

Notice of Intention to Seek Review

The undersigned intends to seek review of the determination of the hearing officer concerning the identification, evaluation or placement of (name of handicapped pupil). Upon receipt of this notice, you are required to have prepared a written transcript of the proceedings before the hearing officer in this matter. A copy of the transcript and of the decision of the hearing officer must be filed with the answer to the petition for review to be filed by the undersigned with the Commissioner of Education.

Notice with Petition

You are hereby required to appear in this review and to answer the allegations contained in this petition. Your answer must conform with the provisions of the Regulations of the Commissioner of Education relating to reviews of this nature, copies of which are available from the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234.

If an answer is not served and filed in accordance with the provisions of such regulations, the statements contained in the petition will be deemed to be true statements, and a decision will be rendered thereon by the Commissioner.

Please take notice that such regulations require that an answer to the petition must be served upon the petitioner, or if petitioner is represented by counsel, upon such counsel, within ten days after the service of the petition for review, and that a copy of such answer must, within two days after such service, be filed with the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234.

Form for Affidavit of Verification

STATE OF NEW YORK
ss.
COUNTY OF .....

....., being duly sworn, deposes and says that he is ..... in this proceeding; that he has read the annexed ..... and knows the contents thereof; that the same is true to the knowledge of deponent except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

.....
(Signature)

Subscribed and sworn to before me
this ..... day of .....19.....

.....
(Signature and title of officer)

Form for Affidavit of Personal Service

STATE OF NEW YORK
ss.
COUNTY OF .....

....., being duly sworn, deposes and says that he is over the age of eighteen years and is not a party in this proceeding; that on the ..... day of ....., 19....., at No. ..... Street, in the town of ....., county of ....., State of New York, he served the annexed ..... on ..... by delivering to and leaving with said ..... at said time and place a true copy thereof.

Deponent further says he knew the person so served to be the said ....., who is ..... in said district.

.....
(Signature)

Subscribed and sworn to before me
this ..... day of ..... 19.....

.....
(Signature and title of officer)

Form for Affidavit of Service by Mail

STATE OF NEW YORK

ss.

COUNTY OF .....

....., being duly sworn, deposes and says that he is over the age of eighteen years and is not a party in this proceeding; that on the ..... day of ....., 19....., deponent served the within ..... upon ..... in this action, at ....., the addresses designated by ..... for that purpose by depositing a true copy of the same by mail, enclosed in a post-paid properly addressed wrapper, in ..... a post-office ..... official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

.....
(Signature)

Subscribed and sworn to before me
this ..... day of ..... 19.....

.....
(Signature and title of officer)

CHILDREN WITH HANDICAPPING CONDITIONS

As a member of the Committee on the Handicapped, you should be aware of current State Education Department definitions of handicapping conditions. Because current Commissioner's Regulations are being changed to conform with Federal Regulations, these definitions are subject to modification by the Board of Regents. The definitions are used as a basis for determining a district's eligibility for state and federal aid purposes.

In reviewing and using these definitions as a committee member, it is important to remember that some children will not fit easily into these categories. It is also important to remember that some handicapping conditions such as emotional disturbance can be transitory and disappear after a child has received special help.

Remember that your primary responsibility is to identify each handicapped child's educational needs - and see that these needs are met. Use the definitions of handicapping conditions to secure special education services for children with special needs - avoid as much as possible using them as permanent labels that define children.

A general definition of a handicapped child is included in the Commissioner's Regulations:

> A handicapped child means a person under the age of 21 who is entitled to attend public schools pursuant to section 3202 of the Education Law and who, because of mental, physical, or emotional reasons, or because of a specific learning disability can receive appropriate educational opportunities from special services and programs to include but not be limited to, transportation, special classes, part-time programs, resource programs, alternate learning centers, home instruction and special teachers; State-operated or State-supported special schools or other special facilities; pupil personnel services; and/or those services, facilities or programs which can be obtained through contracts with boards of cooperative educational services, public school districts, approved non-public schools, or other agencies approved by the department.
>
> A mental reason means a condition which impairs or limits the child's intellectual functioning.
>
> A physical reason means orthopedic, visual, auditory, neurological and other medical or organic conditions which result in inability to benefit from the regular educational programs for non-handicapped children without some form of special services or programs.
>
> An emotional reason means a condition of psycho-social origin leading to behavior which interferes with the child's ability to adjust to and benefit from existing regular class programs.

A specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental - aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage. A child who exhibits a discrepancy of 50 percent or more between expected achievement based on his intellectual ability and actual achievement, determined on an individual basis, shall be deemed to have a specific learning disability.

Currently, the following specific definitions of severely handicapped pupils are contained in the Commissioner's Regulations and used as the basis for the apportionment of additional and special services aid:

Severely crippled and health impaired - a child who must function in a physical environment specially designed, or who needs medication intervention and/or maintenance.

Severely handicapped (deaf) - a child with a hearing handicap in excess of 80 decibels (ISO) in the better ear whose degree and type of hearing loss is so severe that spoken language cannot be acquired normally and whose receptive and expressive communication skills are so limited that additional supportive services are proveded.

Severely emotionally disturbed - a child whose emotional disturbance is so severe that the child is unable to relate to other children and may have an absence of speech, and in addition needs the support of clinical services. A severely emotionally disturbed child is one whose condition has been determined to be such by a school psychologist, a psychiatrist, or by an approved mental health clinic.

Multiply handicapped - a child who, because of the multiplicity of his/her handicapping conditions, requires intervention by more than one certified specialist in the area of education of the handicapped. For purposes of this section, visually impaired children shall be included, but those children whose second handicap is solely in the area of other speech/language impaired shall not be included. Multiply handicapped includes severely to profoundly handicapped children who function at a level that precludes their benefiting from a program for trainable mentally retarded.

Trainable mentally retarded - a child who, on the basis of a comprehensive evaluation, such evaluation to include an individual psychological examination, is determined to possess general intellectual capacity that falls lower than three standard deviations below the mean of the general population, cannot profit from programs established for the educable mentally retarded, but may be expected to profit from special programs for the trainable.

Educable mentally retarded - a child who on the basis of a comprehensive evaluation, such evaluation to include an individual psychological examination, is determined to possess general intellectual

capacity that falls lower than 1.5 standard deviations below the mean of the general population, cannot profit from regular classroom instruction, but may be expected to profit from a special education program.

Severely speech/language impaired - a child with unintelligible speech or inability to communicate verbally. Severely speech/language impaired does not include other speech/language impaired children who exhibit a reduced ability to acquire, use or comprehend language, mild stuttering, vocal disorders or articulation deviations.

Hearing impaired - a child with hearing handicap in the 40 and above decibel range (ISO) whose hearing loss precludes his functioning normally in a regular classroom situation without the supportive services of a resource program.

Visually impaired - a legally blind child with the visual capacity of 20/200 or less in the better eye with the best correction, or a field of vision restricted to a 20 degree arc.

Partially sighted - a child whose visual acuity in the better eye with best correction ranges between 20/70 and 20/200, including those children who can still function capably with their residual vision and who have a medically indicated progressive visual loss, or a recurring serious medical eye problem affecting acuity and operable eye disease.

Emotionally disturbed - a child whose condition has been determined to be such by a school psychologist, a psychiatrist, or by an approved mental health clinic.

Physically handicapped - a child who manifests orthopedic, neurological, and other medical conditions which result in inability to benefit from the regular educational programs for non-handicapped children, without some form of special assistance.

BASIC GUIDELINE FOR COMMITTEE ON THE HANDICAPPED REPORT

A format for the determination of status and resultant recommendations of the Committee on the Handicapped in regard to a specific child is suggested. The Committee on the Handicapped should modify its focus relative to the needs of the child and specific requirements of the district. This format may be amended accordingly.

Report of Committee on Handicapped Meeting

Name of Pupil:_____ Date of Review:_____

Persons in Attendance:_____

_____

Instructions

I. Classification: Committee has the responsibility for determining whether a child "possesses" a handicapping condition. (Use only categories currently defined in Commissioner's Regulations, Section 200. 2.)

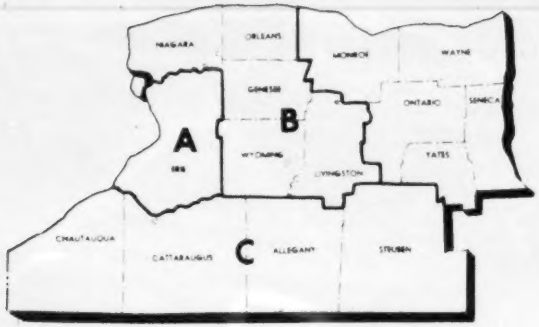
II. Special Educational Services: A handicapped child is one who requires special education, i.e., special services or programs including related services. Special education means specially designed instruction at no cost to the parents, to meet the unique needs of a handicapped child, including classroom instruction provided by a certified teacher of special education, including but not limited to: special class, resource programs, part-time programs, alternate learning centers. See section 4401 a basis instructional program also includes instruction in physical education, home instruction and instruction in hospitals and institutions.

III. Related Services: Related services are those services...required to assist the child in benefiting from special education. See Regs section 200.1 (s)

Medical Diagnostic Services
Psychological Services
Physical Therapy
Occupational Therapy
Social Work Services
Counseling Services
Transportation
Mobility (blind)
Audiology
Speech Pathology

IV. Committees on the Handicapped have the responsibility to document the programmatic needs of the handicapped child based on the written evaluation reports submitted.

OECHC REGIONAL OFFICES AND AREAS SERVED



REGION I

NYS Education Department
2 West Pleasant Avenue
Lancaster, NY 14086
716: 686-2082

REGION II

NYS Education Department
6820 N. Thompson Road
Syracuse, NY 13211
315: 437-1631
Ext. 238

REGION III

NYS Education Department
55 Elk Street
Albany, NY 12234
518: 474-5356

REGION IV

NYS Education Department
World Trade Center
Tower II, Room 5060
New York, NY 10047
212: 488-4450

REGION V

NYS Education Department
Nassau BOCES
Valentines Road & The Plain Road
Westbury, NY 11590
516: 997-8700